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Attorney for DEFENDANT and CROSS-CLAIMANT
Glenn Douglas

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

KAREL SPIKES

Plaintiff,

v.

GLENN DOUGLAS dba THE WASH HOUSE;
LEE FAMILY TRUST 11-27-90 and DOES 1
THROUGH 10, Inclusive,

Defendants.

CASE NO: 08 CV 0690 L (POR)

**ANSWER OF DEFENDANT AND
CROSS-CLAIMANT GLENN
DOUGLAS**

Complaint Filed: 16 April 2008

GLENN DOUGLAS dba THE WASH HOUSE,

Cross-Claimant,

v.

LEE FAMILY TRUST 11-27-90 and ROES 1
through 10, inclusive,

Cross-Defendants.

Defendant and Cross-Claimant GLENN DOUGLAS ("DEFENDANT"), for himself alone
and for no other defendant(s), respectfully answers the Complaint ("COMPLAINT") of Plaintiff
in the above-encaptioned matter, and admits, denies and alleges as follows:

1 1. DEFENDANT responds that the allegations set forth in the preamble to
2 the Complaint constitute legal conclusions and therefore no response is required; to the
3 extent a response is required, DEFENDANT lacks information and belief sufficient to
4 respond to the remaining allegations of Paragraph 1 of the Complaint and on that basis
5 denies them.
6

7
8 2. DEFENDANT responds that the allegations set forth in Paragraph 1 of the
9 Complaint constitute legal conclusions and therefore no response is required; to the
10 extent a response is required, DEFENDANT lacks information and belief sufficient to
11 respond to the remaining allegations of Paragraph 1 of the Complaint and on that basis
12 denies them.
13

14
15 3. DEFENDANT responds that the allegations set forth in Paragraph 2 of the
16 Complaint constitute legal conclusions and therefore no response is required; to the
17 extent a response is required, DEFENDANT lacks information and belief sufficient to
18 respond to the remaining allegations of Paragraph 2 of the Complaint and on that basis
19 denies them.
20

21
22 4. DEFENDANT responds that the allegations set forth in Paragraph 3 of the
23 Complaint constitute legal conclusions and therefore no response is required; to the
24 extent a response is required, DEFENDANT lacks information and belief sufficient to
25 respond to the remaining allegations of Paragraph 4 of the Complaint and on that basis
26 denies them.
27
28

1 5. DEFENDANT responds that the allegations set forth in Paragraph 4 of the
2 Complaint constitute legal conclusions and therefore no response is required; to the
3 extent a response is required, DEFENDANT admits that he operates a business open to
4 the public, generally located at or about 2472 Market Street, San Diego, California (the
5 “Facility”) and generally known as “The Wash House”, but lacks information and belief
6 sufficient to respond to the remaining allegations of Paragraph 4 of the Complaint and
7 on that basis denies them.
8

9
10 6. DEFENDANT responds that the allegations set forth in Paragraph 5 of the
11 Complaint constitute legal conclusions and therefore no response is required; to the
12 extent a response is required, DEFENDANT lacks information and belief sufficient to
13 respond to the remaining allegations of Paragraph 5 of the Complaint and on that basis
14 denies them.
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16
17 7. DEFENDANT responds that the allegations set forth in Paragraph 6 of the
18 Complaint constitute legal conclusions and therefore no response is required; to the
19 extent a response is required, DEFENDANT lacks information and belief sufficient to
20 respond to the remaining allegations of Paragraph 6 of the Complaint and on that basis
21 denies them.
22

23
24 8. DEFENDANT responds that the allegations set forth in Paragraph 7 of the
25 Complaint constitute legal conclusions and therefore no response is required; to the
26 extent a response is required, DEFENDANT lacks information and belief sufficient to
27 respond to the remaining allegations of Paragraph 7 of the Complaint and on that basis
28

denies them.

9. DEFENDANT responds that the allegations set forth in Paragraph 8 of the Complaint constitute legal conclusions and therefore no response is required; to the extent a response is required, DEFENDANT lacks information and belief sufficient to respond to the remaining allegations of Paragraph 8 of the Complaint and on that basis denies them.

10. DEFENDANT responds that the allegations set forth in Paragraph 9 of the Complaint constitute legal conclusions and therefore no response is required; to the extent a response is required, DEFENDANT lacks information and belief sufficient to respond to the remaining allegations of Paragraph 9 of the Complaint and on that basis denies them.

11. DEFENDANT responds that the allegations set forth in Paragraph 10 of the Complaint constitute legal conclusions and therefore no response is required; to the extent a response is required, DEFENDANT lacks information and belief sufficient to respond to the remaining allegations of Paragraph 10 of the Complaint and on that basis denies them.

12. DEFENDANT responds that the allegations set forth in Paragraph 11 of the Complaint constitute legal conclusions and therefore no response is required; to the extent a response is required, DEFENDANT lacks information and belief sufficient to respond to the remaining allegations of Paragraph 11 of the Complaint and on that

1 basis denies them.

2
3 13. DEFENDANT responds that the allegations set forth in Paragraph 12 of
4 the Complaint constitute legal conclusions and therefore no response is required; to the
5 extent a response is required, DEFENDANT lacks information and belief sufficient to
6 respond to the remaining allegations of Paragraph 12 of the Complaint and on that
7 basis denies them.
8

9
10 14. DEFENDANT responds that the allegations set forth in Paragraph 13 of
11 the Complaint constitute legal conclusions and therefore no response is required; to the
12 extent a response is required, DEFENDANT lacks information and belief sufficient to
13 respond to the remaining allegations of Paragraph 13 of the Complaint and on that
14 basis denies them.
15

16
17 15. DEFENDANT responds that the allegations set forth in Paragraph 14 of
18 the Complaint constitute legal conclusions and therefore no response is required; to the
19 extent a response is required, DEFENDANT lacks information and belief sufficient to
20 respond to the remaining allegations of Paragraph 14 of the Complaint and on that
21 basis denies them.
22

23
24 16. DEFENDANT responds that the allegations set forth in Paragraph 15 of
25 the Complaint constitute legal conclusions and therefore no response is required; to the
26 extent a response is required, DEFENDANT lacks information and belief sufficient to
27 respond to the remaining allegations of Paragraph 15 of the Complaint and on that
28

1 basis denies them.

2
3 17. DEFENDANT responds that the allegations set forth in Paragraph 16 of
4 the Complaint constitute legal conclusions and therefore no response is required; to the
5 extent a response is required, DEFENDANT lacks information and belief sufficient to
6 respond to the remaining allegations of Paragraph 16 of the Complaint and on that
7 basis denies them.
8

9
10 18. DEFENDANT responds that the allegations set forth in Paragraph 17 of
11 the Complaint constitute legal conclusions and therefore no response is required; to the
12 extent a response is required, DEFENDANT lacks information and belief sufficient to
13 respond to the remaining allegations of Paragraph 17 of the Complaint and on that
14 basis denies them.
15

16
17 19. DEFENDANT responds that the allegations set forth in Paragraph 18 of
18 the Complaint constitute legal conclusions and therefore no response is required; to the
19 extent a response is required, DEFENDANT lacks information and belief sufficient to
20 respond to the remaining allegations of Paragraph 18 of the Complaint and on that
21 basis denies them.
22

23
24 20. DEFENDANT responds that the allegations set forth in Paragraph 19 of
25 the Complaint constitute legal conclusions and therefore no response is required; to the
26 extent a response is required, DEFENDANT lacks information and belief sufficient to
27 respond to the remaining allegations of Paragraph 19 of the Complaint and on that
28

1 basis denies them.

2
3 21. DEFENDANT responds that the allegations set forth in Paragraph 20 of
4 the Complaint constitute legal conclusions and therefore no response is required; to the
5 extent a response is required, DEFENDANT lacks information and belief sufficient to
6 respond to the remaining allegations of Paragraph 20 of the Complaint and on that
7 basis denies them.
8

9
10 22. DEFENDANT responds that the allegations set forth in Paragraph 21 of
11 the Complaint constitute legal conclusions and therefore no response is required; to the
12 extent a response is required, DEFENDANT lacks information and belief sufficient to
13 respond to the remaining allegations of Paragraph 21 of the Complaint and on that
14 basis denies them.
15

16
17 23. DEFENDANT responds that the allegations set forth in Paragraph 22 of
18 the Complaint constitute legal conclusions and therefore no response is required; to the
19 extent a response is required, DEFENDANT lacks information and belief sufficient to
20 respond to the remaining allegations of Paragraph 22 of the Complaint and on that
21 basis denies them.
22

23
24 24. DEFENDANT responds that the allegations set forth in Paragraph 23 of
25 the Complaint constitute legal conclusions and therefore no response is required; to the
26 extent a response is required, DEFENDANT lacks information and belief sufficient to
27 respond to the remaining allegations of Paragraph 23 of the Complaint and on that
28

1 basis denies them.

2
3 25. DEFENDANT responds that the allegations set forth in Paragraph 24 of
4 the Complaint constitute legal conclusions and therefore no response is required; to the
5 extent a response is required, DEFENDANT lacks information and belief sufficient to
6 respond to the remaining allegations of Paragraph 24 of the Complaint and on that
7 basis denies them.
8

9
10 26. DEFENDANT responds that the allegations set forth in Paragraph 25 of
11 the Complaint constitute legal conclusions and therefore no response is required; to the
12 extent a response is required, DEFENDANT lacks information and belief sufficient to
13 respond to the remaining allegations of Paragraph 25 of the Complaint and on that
14 basis denies them.
15

16
17 27. DEFENDANT responds that the allegations set forth in Paragraph 26 of
18 the Complaint constitute legal conclusions and therefore no response is required; to the
19 extent a response is required, DEFENDANT lacks information and belief sufficient to
20 respond to the remaining allegations of Paragraph 26 of the Complaint and on that
21 basis denies them.
22

23
24 28. DEFENDANT responds that the allegations set forth in Paragraph 27 of
25 the Complaint constitute legal conclusions and therefore no response is required; to the
26 extent a response is required, DEFENDANT lacks information and belief sufficient to
27 respond to the remaining allegations of Paragraph 27 of the Complaint and on that
28

1 basis denies them.

2
3 29. DEFENDANT responds that the allegations set forth in Paragraph 28 of
4 the Complaint constitute legal conclusions and therefore no response is required; to the
5 extent a response is required, DEFENDANT lacks information and belief sufficient to
6 respond to the remaining allegations of Paragraph 28 of the Complaint and on that
7 basis denies them.
8

9
10 30. DEFENDANT responds that the allegations set forth in Paragraph 29 of
11 the Complaint constitute legal conclusions and therefore no response is required; to the
12 extent a response is required, DEFENDANT lacks information and belief sufficient to
13 respond to the remaining allegations of Paragraph 29 of the Complaint and on that
14 basis denies them.
15

16
17 31. DEFENDANT responds that the allegations set forth in Paragraph 30 of
18 the Complaint constitute legal conclusions and therefore no response is required; to the
19 extent a response is required, DEFENDANT lacks information and belief sufficient to
20 respond to the remaining allegations of Paragraph 30 of the Complaint and on that
21 basis denies them.
22

23
24 32. DEFENDANT responds that the allegations set forth in Paragraph 31 of
25 the Complaint constitute legal conclusions and therefore no response is required; to the
26 extent a response is required, DEFENDANT lacks information and belief sufficient to
27 respond to the remaining allegations of Paragraph 31 of the Complaint and on that
28

1 basis denies them.

2
3 33. DEFENDANT responds that the allegations set forth in Paragraph 32 of
4 the Complaint constitute legal conclusions and therefore no response is required; to the
5 extent a response is required, DEFENDANT lacks information and belief sufficient to
6 respond to the remaining allegations of Paragraph 32 of the Complaint and on that
7 basis denies them.
8

9
10 34. DEFENDANT responds that the allegations set forth in Paragraph 33 of
11 the Complaint constitute legal conclusions and therefore no response is required; to the
12 extent a response is required, DEFENDANT lacks information and belief sufficient to
13 respond to the remaining allegations of Paragraph 33 of the Complaint and on that
14 basis denies them.
15

16
17 35. In response to the "Demand for Judgment of Relief" of the Complaint,
18 paragraphs 1 through 7, these paragraphs constitute prayers for relief and therefore no
19 response is required. Nonetheless,
20

21
22 a. DEFENDANT urges the Court to decline jurisdiction of this case;
23

24 b. DEFENDANT denies that PLAINTIFFS are entitled to any injunctive relief
25 under 42 USC 12188(a)(2), 28 CFR 36.501(b), or any other applicable
26 law, precedent or statute;
27
28

- 1 c. DEFENDANT denies that PLAINTIFFS are entitled to any mandatory relief
2 under subpart E of 28 CFR Part 36 or any other applicable law, precedent
3 or statute;
4
5 d. DEFENDANT denies that PLAINTIFFS are entitled to any attorney's fees,
6 litigation expenses and/or costs of this suit under 42 USC 12205, 28 CFR
7 36.505 California Code of Civil Procedure 1021.5, California Civil Code 55
8 or any other applicable law, precedent or statute;
9
10 e. DEFENDANT denies that PLAINTIFFS are entitled to any general or
11 special damages under California Civil Code 54.3(a), 52(a) or any other
12 applicable law, precedent or statute;
13
14 f. DEFENDANT denies that PLAINTIFFS are entitled to any general,
15 special, punitive or exemplary damages; and
16
17 g. DEFENDANT denies that PLAINTIFFS are entitled to any other relief
18 under their Complaint.
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21
22

23 **AFFIRMATIVE DEFENSES**
24

25 36. As separate and distinct affirmative defenses to the causes of action alleged in
26 the Complaint, DEFENDANT alleges as follows, without assuming the burden of proof where
27 the burden of proof rests on PLAINTIFFS:
28

First Affirmative Defense

37. As a first and separate Affirmative Defense, and solely by way of an alternative defense, not to be construed as an admission, this answering DEFENDANT alleges that this Court lacks subject matter jurisdiction over this matter because there is no actionable wrong arising under the Americans with Disabilities Act of 1990, 42 USC §12101, et. seq.

Second Affirmative Defense

38. As a second and separate Affirmative Defense, and solely by way of an alternative defense, not to be construed as an admission, this answering DEFENDANT alleges that this Court lacks pendent and/or supplemental jurisdiction over all claims arising under California law, including, but not limited to, claims under California Health and Safety Code §19955, et. seq., California Civil Code §§ 51, 51.5, 54 et. seq., and California Business & Professions Code §17200 et. seq., because there is no actionable wrong arising under the Americans with Disabilities Act of 1990, 42 USC §12101, et. seq.

Third Affirmative Defense

39. As a third and separate Affirmative Defense, and solely by way of an alternative defense, not to be construed as an admission, this answering DEFENDANT alleges that this Court lacks subject matter jurisdiction over this matter because there is not actionable wrong arising under California Health and Safety Code §19955 et. seq.

Fourth Affirmative Defense

40. As a fourth and separate Affirmative Defense, and solely by way of an alternative defense, not to be construed as an admission, this answering DEFENDANT alleges that this Court lacks subject matter jurisdiction over this matter because there is not actionable wrong arising under California Civil Code §§ 54, 54.1, 54.3, et. seq.

Fifth Affirmative Defense

41. As a fifth and separate Affirmative Defense, and solely by way of an alternative defense, not to be construed as an admission, this answering DEFENDANT alleges that this Court lacks subject matter jurisdiction over this matter because there is not actionable wrong arising under the Unruh Civil Rights Act, California Civil Code §§ 51.5, et. seq.

Sixth Affirmative Defense

42. As a sixth and separate Affirmative Defense, and solely by way of an alternative defense, not to be construed as an admission, this answering DEFENDANT is performing all readily achievable barrier removal, within their control, required by law, and therefore PLAINTIFFS' claim against DEFENDANT is barred.

Seventh Affirmative Defense

1 43. As a seventh and separate Affirmative Defense, and solely by way of an
2 alternative defense, not to be construed as an admission, this answering DEFENDANT is
3 providing alternative methods of access to those areas of the Facility which are within their
4 control, required by law, and therefore PLAINTIFFS' claim against DEFENDANT is barred.
5

6
7 **Eighth Affirmative Defense**
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9 44. As an eighth and separate Affirmative Defense, and solely by way of an
10 alternative defense, not to be construed as an admission, this answering DEFENDANT alleges
11 that the Complaint and each and every cause of action therein is barred by the applicable
12 statute of limitations, including specifically, but not limited to California Code of Civil Procedure
13 §§ 336, 336a, 337, 337a, 337.1, 337.15, 337.2, 338, 339, 339.5, 340, 340.1, 340.2, 340.3,
14 340.5, 340.6, 343, 346 and 347, Civil Code §§ 51 *et. seq.* and 3426.6, and Business &
15 Professions Code § 17200.
16

17
18 **Ninth Affirmative Defense**
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21 45. As a ninth and separate Affirmative Defense, and solely by way of an alternative
22 defense, not to be construed as an admission, this answering DEFENDANT alleges that the
23 Complaint and each and every cause of action therein is barred by the doctrines of laches,
24 estoppel, unclean hands, waiver, consent, acquiescence, ratification and reasonably implied
25 assumption of risk.
26

27
28 **Tenth Affirmative Defense**

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2 46. As a tenth and separate Affirmative Defense, and solely by way of an alternative
3 defense, not to be construed as an admission, this answering DEFENDANT alleges that the
4 Complaint and each and every cause of action therein is barred because PLAINTIFFS never
5 sustained any damages caused by DEFENDANT, nor is PLAINTIFFS entitled to the Damages
6 alleged.
7

8
9 **Eleventh Affirmative Defense**
10

11 47. As an eleventh and separate Affirmative Defense, and solely by way of an
12 alternative defense, not to be construed as an admission, this answering DEFENDANT alleges
13 that the Complaint and each and every cause of action therein is barred because PLAINTIFFS
14 has failed to mitigate any damages PLAINTIFFS claims to have suffered and therefore, any
15 recovery against DEFENDANT should be reduced accordingly.
16

17
18 **Twelfth Affirmative Defense**
19

20 48. As a twelfth and separate Affirmative Defense, and solely by way of an
21 alternative defense, not to be construed as an admission, this answering DEFENDANT alleges
22 that the Complaint and each and every cause of action therein is barred because
23 DEFENDANTS' conduct was not unlawful in that DEFENDANT complied with and performed
24 all applicable statutes and obligations imposed by law to the full extent of its responsibility.
25
26

27 **Thirteenth Affirmative Defense**
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2 49. As a thirteenth and separate Affirmative Defense, and solely by way of an
3 alternative defense, not to be construed as an admission, this answering DEFENDANT alleges
4 that the Complaint and each and every cause of action therein is barred because
5 DEFENDANT'S actions were reasonable exercises of it's business judgment, and not
6 forbidden by law or unfair.
7

8
9 **Fourteenth Affirmative Defense**
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11 50. As a fourteenth and separate Affirmative Defense, and solely by way of an
12 alternative defense, not to be construed as an admission, this answering DEFENDANT alleges
13 that the Complaint and each and every cause of action therein is barred because PLAINTIFFS'
14 damages, if any, were caused by PLAINTIFFS' own negligence or want of ordinary care and
15 prudence.
16

17
18 **Fifteenth Affirmative Defense**
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20 51. As a fifteenth and separate Affirmative Defense, and solely by way of an
21 alternative defense, not to be construed as an admission, this answering DEFENDANT alleges
22 that the Complaint and each and every cause of action therein is barred by the doctrine of *in*
23 *pari delicto*.
24

25
26 **Sixteenth Affirmative Defense**
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1 52. As a sixteenth and separate Affirmative Defense, and solely by way of an
2 alternative defense, not to be construed as an admission, this answering DEFENDANT alleges
3 that the Complaint and each and every cause of action therein is barred because PLAINTIFFS'
4 acts, omissions, representations and conduct constitute an estoppel, and bar her claims.
5

6
7 **Seventeenth Affirmative Defense**
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9 53. As a seventeenth and separate Affirmative Defense, and solely by way of an
10 alternative defense, not to be construed as an admission, this answering DEFENDANT alleges
11 that the Complaint and each and every cause of action therein is barred because PLAINTIFFS
12 has waived any and all claims she has made against DEFENDANT.
13

14
15 **Eighteenth Affirmative Defense**
16

17 54. As an Eighteenth and separate Affirmative Defense, and solely by way of an
18 alternative defense, not to be construed as an admission, this answering DEFENDANT alleges
19 that the Complaint and each and every cause of action therein is barred because any such
20 conduct as alleged in the Complaint was consented to by PLAINTIFFS.
21

22
23 **Nineteenth Affirmative Defense**
24

25 55. As a Nineteenth and separate Affirmative Defense, and solely by way of an
26 alternative defense, not to be construed as an admission, this answering DEFENDANT alleges
27 that the Complaint and each and every cause of action therein is barred to the extent that the
28

1 damages or losses allegedly sustained by PLAINTIFFS, if any, were the direct and proximate
2 result of intervening and superseding actions on the part of other parties, and not
3 DEFENDANT, barring PLAINTIFFS' recovery from DEFENDANT and/or entitling DEFENDANT
4 to indemnity or contribution from those parties.
5

6 **Twentieth Affirmative Defense**

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9 56. As a Twentieth and separate Affirmative Defense, and solely by way of an
10 alternative defense, not to be construed as an admission, this answering DEFENDANT alleges
11 that the Complaint and each and every cause of action therein is barred because
12 DEFENDANT at no time acted with any intent to injure PLAINTIFFS, and the DEFENDANT
13 took no actions intended to cause any harm to PLAINTIFFS.
14

15 **Twenty-First Affirmative Defense**

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18 57. As a twenty-first and separate Affirmative Defense, and solely by way of an
19 alternative defense, not to be construed as an admission, this answering DEFENDANT alleges
20 that the Complaint and each and every cause of action therein is barred because
21 DEFENDANT did not engage in any willful, malicious, oppressive or outrageous conduct with
22 regard to PLAINTIFFS.
23

24 **Twenty-Second Affirmative Defense**

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27 58. As a twenty-second and separate Affirmative Defense, and solely by way of an
28

1 alternative defense, not to be construed as an admission, this answering DEFENDANT alleges
2 that PLAINTIFFS' prayer for injunctive relief is barred because PLAINTIFFS has an adequate
3 remedy at law.
4

5
6 **Twenty-Third Affirmative Defense**
7

8 59. As a twenty-third and separate Affirmative Defense, and solely by way of an
9 alternative defense, not to be construed as an admission, this answering DEFENDANT alleges
10 that the Complaint and each and every cause of action therein is barred because PLAINTIFFS
11 failed to exercise reasonable resourcefulness, care and diligence to mitigate any damages
12 PLAINTIFFS allege she has suffered.
13

14
15 **Twenty-Fourth Affirmative Defense**
16

17 60. As a twenty-fourth and separate Affirmative Defense, and solely by way of an
18 alternative defense, not to be construed as an admission, this answering DEFENDANT alleges
19 that the Complaint and each and every cause of action therein is barred because any losses,
20 damages and/or injuries sustained by PLAINTIFFS were proximately caused by the fault of
21 persons or entities other than DEFENDANT.
22

23
24 **Twenty-Fifth Affirmative Defense**
25

26 61. As a twenty-fifth and separate Affirmative Defense, and solely by way of an
27 alternative defense, not to be construed as an admission, this answering DEFENDANT alleges
28

1 that the Complaint and each and every cause of action therein is barred because any losses,
2 damages and/or injuries sustained by PLAINTIFFS were the result of superseding and
3 intervening acts of third parties.
4

5
6 **Twenty-Sixth Affirmative Defense**
7

8 62. As a twenty-sixth and separate Affirmative Defense, and solely by way of an
9 alternative defense, not to be construed as an admission, this answering DEFENDANT alleges
10 that the Complaint and each and every cause of action therein is barred because
11 DEFENDANT has acted in good faith and with the belief that its conduct was lawful.
12

13
14 **Twenty-Seventh Affirmative Defense**
15

16 63. As a twenty-seventh and separate Affirmative Defense, and solely by way of an
17 alternative defense, not to be construed as an admission, this answering DEFENDANT alleges
18 that the Complaint and each and every cause of action therein is barred because PLAINTIFFS'
19 damages, if any, were caused in whole or in part by third parties over whom DEFENDANTS
20 had no control.
21

22
23 **Twenty-Eighth Affirmative Defense**
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25 64. As a twenty-eighth and separate Affirmative Defense, and solely by way of an
26 alternative defense, not to be construed as an admission, this answering DEFENDANT alleges
27 that the Complaint and each and every cause of action therein is barred to the extent if
28

1 PLAINTIFFS sustained any damage as alleged in the Complaint, which is denied,
2 DEFENDANTS and their agents and servants took all reasonable measures to avoid the
3 alleged damage.
4

5
6 **Twenty-Ninth Affirmative Defense**
7

8 65. As a twenty-ninth and separate Affirmative Defense, and solely by way of an
9 alternative defense, not to be construed as an admission, this answering DEFENDANT alleges
10 that the Complaint and each and every cause of action therein is barred because PLAINTIFFS
11 lacks standing to prosecute the claims alleged in the Complaint.
12

13
14 **Thirtieth Affirmative Defense**
15

16 66. As a thirtieth and separate Affirmative Defense, and solely by way of an
17 alternative defense, not to be construed as an admission, this answering DEFENDANT alleges
18 that the Complaint and each and every cause of action therein is barred because the Property
19 is in substantial compliance with all applicable standards, codes, laws, statutes or regulations
20 and that the actions sought by PLAINTIFFS were not "readily achievable" as defined by law.
21

22
23 **Thirty-First Affirmative Defense**
24

25 67. As a thirty-first and separate Affirmative Defense, and solely by way of an
26 alternative defense, not to be construed as an admission, this answering DEFENDANT alleges
27 that the Complaint and each and every cause of action therein is barred because this
28

1 answering DEFENDANT alleges that it did not have exclusive control over the premises where
2 the alleged disabled access violations are purported to exist.

3
4 **Thirty-Second Affirmative Defense**

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6
7 68. As a thirty-second and separate Affirmative Defense, and solely by way of an
8 alternative defense, not to be construed as an admission, DEFENDANT demands that their
9 alleged fault or responsibility be compared to other parties and non-parties to this suit as
10 provided by any governing authority or common law scheme of comparative fault, comparative
11 responsibility or contribution.

12
13 **Thirty-Third Affirmative Defense**

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15
16 69. As a thirty-third and separate Affirmative Defense, and solely by way of an
17 alternative defense, not to be construed as an admission, this answering DEFENDANT
18 contend that PLAINTIFFS has failed to state facts or legal claims sufficient to form the basis for
19 an award of attorneys fees in favor of PLAINTIFFS.

20
21 **Thirty-Fourth Affirmative Defense**

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23
24 70. As a thirty-fourth and separate Affirmative Defense, and solely by way of an
25 alternative defense, not to be construed as an admission, this answering DEFENDANT
26 contend that PLAINTIFFS are estopped to assert a claim because of his actions and inactions.

Thirty-Fifth Affirmative Defense

71. As a thirty-fifth and separate Affirmative Defense, and solely by way of an alternative defense, not to be construed as an admission, this answering DEFENDANT is informed and believes that PLAINTIFFS has unclean hands and is therefore not entitled to relief from this Court.

Thirty-Sixth Affirmative Defense

72. As a thirty-sixth and separate Affirmative Defense, and solely by way of an alternative defense, not to be construed as an admission, this answering DEFENDANT is informed and believes that modification of the subject premises for all renovations required or appropriate for disabled access or compliance with applicable law may not be “readily achievable” as that term is defined in applicable law.

Thirty-Seventh Affirmative Defense

73. As a thirty-seventh and separate Affirmative Defense, and solely by way of an alternative defense, not to be construed as an admission, this answering DEFENDANT is informed and believes that modification of the subject premises for all renovations required or appropriate for disabled access or compliance with applicable law may represent an undue hardship.

Thirty-Eighth Affirmative Defense

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2 74. As a thirty-eighth and separate Affirmative Defense, and solely by way of an
3 alternative defense, not to be construed as an admission, this answering DEFENDANT alleges
4 that at the time of the filing of this answer, affirmative defenses may not have been alleged for
5 reasons that insufficient facts and information were available after reasonable inquiry. This
6 answering DEFENDANT therefore reserves the right to amend this answer to allege additional
7 affirmative defenses based upon subsequent discovery of new or different facts or subsequent
8 appreciation of currently known facts, and further reserves the right to seek indemnity and/or
9 contribution from any third parties.
10

11
12 **Thirty-Ninth Affirmative Defense**
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15 75. As a thirty-ninth and separate Affirmative Defense, and solely by way of an
16 alternative defense, not to be construed as an admission, this answering DEFENDANT alleges
17 that some or all of the property which is the subject of this lawsuits, or some or all of the
18 improvements or attachments thereon, are or may be protected by laws and standards which
19 prevent certain types of modifications or other actions in, on or around such structures, at least
20 without all prior approvals and permits.
21

22
23 **Fortieth Affirmative Defense**
24

25 76. As a fortieth and separate Affirmative Defense, and solely by way of an
26 alternative defense, not to be construed as an admission, this answering defendant alleges
27 that at the time of the filing of this answer, affirmative defenses may not have been alleged for
28

1 reasons that insufficient facts and information were available after reasonable inquiry. This
2 answering defendant therefore reserves the right to amend this answer to alleges additional
3 affirmative defenses based upon subsequent discovery of new or different facts or subsequent
4 appreciation of currently known facts, and further reserves the right to seek indemnity and/or
5 contribution from any third parties.
6

7 **Forty-First Affirmative Defense**

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9
10 77. As a forty-first and separate Affirmative Defense, and solely by way of an
11 alternative defense, not to be construed as an admission, and as a plea of comparative
12 negligence, this answering defendant alleges if this answering defendant is held negligent,
13 which negligence contributed as a proximate cause to plaintiff's injuries or damages, if any,
14 that plaintiff was negligent, which negligence contributed to plaintiff's accident. This answering
15 defendant prays that any damages awarded to plaintiff be diminished in proportion to the
16 degree of fault attributable to plaintiff.
17
18

19 **Forty-Second Affirmative Defense**

20
21
22 78. As a forty-second and separate Affirmative Defense, and solely by way of an
23 alternative defense, not to be construed as an admission, this answering defendant alleges
24 that if plaintiff is entitled to a joint judgment against this answering defendant and the
25 remaining DEFENDANT, and each of them, this answering defendant pray that this court order
26 each of the judgment debtors to pay to plaintiff their proportionate share of joint judgment, the
27 judgment debtor's proportionate share having been determined by the trier of fact; and if this
28

1 answering defendant is required to pay to plaintiff a disproportionate share of each joint
2 judgment, this answering defendant pray leave of this court to seek contribution by motion
3 against any other judgment debtor not paying the proportionate share allocated to any such
4 DEFENDANT by the trier of fact.
5

6
7 **Forty-Third Affirmative Defense**
8

9 79. As a forty-third and separate Affirmative Defense, and solely by way of an
10 alternative defense, not to be construed as an admission, Plaintiff did not provide written notice
11 (pursuant to CCP § 1033 or any other statute) before filing this lawsuit and is thereby stopped
12 from asserting that any of plaintiff's legal fees are reasonably incurred.
13
14

15 WHEREFORE, this answering DEFENDANT prays for judgment as follows:
16

17 1. That PLAINTIFFS take nothing by reason of his Complaint and that judgment be
18 entered in favor of DEFENDANT;
19

20 2. That DEFENDANT be awarded costs of suit incurred in the defense of this action
21 including reasonable attorneys' fees, to the extent allowed by law;
22
23

24 3. For such other and further relief as the Court deems just and proper.
25

26 *Respectfully submitted,*

27 Dated: 21 May 2008
28

Lawyers Against Lawsuit Abuse, APC

s/ DAVID W. PETERS, Attorney for DEFENDANT and

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CROSS-CLAIMANT GLENN DOUGLAS
Email: dpeters@ascervus.com

-- VIA FACSIMILE --

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dpeters@ascervus.com

Attorney for DEFENDANT and CROSS-CLAIMANT
Glenn Douglas

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

KAREL SPIKES

Plaintiff,

v.

GLENN DOUGLES dba THE WASH HOUSE;
LEE FAMILY TRUST 11-27-90 and DOES 1
THROUGH 10, Inclusive,

Defendants.

GLENN DOUGLES dba THE WASH HOUSE,

Cross-Claimant,

v.

LEE FAMILY TRUST 11-27-90 and DOES 1
through 10, inclusive,

Third Party Defendants.

CASE NO: 08 CV 0690 L (POR)

Proof of Service of:

**ANSWER OF DEFENDANT AND
CROSS-CLAIMANT GLENN
DOUGLAS**

Complaint Filed: 11 September 2006

I, the undersigned, hereby declare that I am a resident of the State of California and am employed in the County of San Diego, State of California. I am over the age of 18 and not a party to the within action; my business address is Lawyers Against Lawsuit Abuse, APC, 402 West Broadway, Suite 400, San Diego, CA 92101.

On 21 May 2008, I served the foregoing document described as:

1. ANSWER OF DEFENDANT AND CROSS-CLAIMANT GLENN DOUGLAS

on the parties in this action by serving:

Amy B. Vandeveld, Esq.
Law Offices of Amy B. Vandeveld
1850 Fifth Avenue, Suite 22
San Diego, CA 92101

Mr. Earl J. Lee, Trustee
Lee Family Trust 11-27-90
2169 West Drive
El Cajon, CA 92021

(X) By Electronic Service Transmission via the United States District Court, Southern Division, Case Management/Electronic Case Files, Filing System. I served a copy of the above-listed document(s) to the e-mail addresses of the addressee(s) by use of email as identified and maintained therein.

(X) FEDERAL I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on 21 May 2008, at San Diego, California.

s/

DAVID W. PETERS,
Email: dpeters@ascervus.com

-- VIA FACSIMILE --